

Message Text

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ORIGIN EB-07

INFO OCT-01 EUR-12 ISO-00 FEA-01 ERDA-05 AID-05 CEA-01

CIAE-00 CIEP-01 COME-00 DODE-00 FPC-01 H-02 INR-07

INT-05 L-03 NSAE-00 NSC-05 OMB-01 PM-04 USIA-06

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TO AMEMBASSY OTTAWA

C O N F I D E N T I A L STATE 236989

E.O. 11652: GDS

TAGS: ENRG

SUBJECT: US - CANADIAN PIPELINE TREATY DISCUSSION

1. US AND CANADIAN DISCUSSIONS ON A TRANSIT PIPELINE TREATY HELD IN WASHINGTON, OCTOBER 2 FOCUSED ON TWO ISSUES: A) ARTICLE VI - CANADIAN DESIRE TO ENSURE THAT TREATY IS NOT SEEN BY PUBLIC TO BE ADVANCE CESSION OF AUTHORITY TO DETERMINE TERMS AND CONDITIONS FOR CONSTRUCTION AND OPERATION OF PIPELINE THROUGH NORTHERN TERRITORIES BASED ON RECOMMENDATIONS OF BERGER COMMISSION VERSUS US DESIRE TO ENSURE THAT TREATY GUARANTEES ON NON-IMPEDANCE OF THROUGHPUT AND NON-DISCRIMINATORY TREATMENT APPLIES TO FUTURE AS WELL AS EXISTING PIPELINES, AND B) ARTICLE III (3) - THE NEED TO HAVE SOME FORMULA SPELLED OUT IN TREATY THAT INDICATES EXISTENCE OF REASONABLE LIMIT ON LEVELS OF TAXATION THAT PROVINCIAL

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GOVERNMENTS CAN IMPOSE ON TRANSIT PIPELINE.

2. ACCEPTABLE LANGUAGE APPARENTLY MEETING US-CANADIAN NEEDS WAS WORKED OUT ON FIRST ISSUE. HOWEVER, BOTH SIDES RESERVED FINAL APPROVAL AND WILL CONSIDER FURTHER.

3. ON SECOND ISSUE, US MADE CLEAR TO CANADIANS THAT TREATY MUST CONTAIN SOME LIMIT ON ABILITY OF PROVINCES TO TAX TRANSIT PIPELINES. CANADIANS EXPLAINED DIFFICULTIES

INHERENT IN THEIR CONSTITUTIONAL SITUATION WHICH LIMITS FEDERAL GOVERNMENT'S ABILITY TO RESTRICT PROVINCIAL TAXATION.

4. CANADIAN SIDE WILL EXPEDITIOUSLY PREPARE ALTERNATIVE LANGUAGE TO MEET US NEEDS UNDER ARTICLE III (3) AND HOPE TO PROVIDE NEW TEXT NEXT WEEK.

5. AGREED PRESS GUIDANCE: US AND CANADIAN OFFICIALS HELD DISCUSSIONS ON A TRANSIT PIPELINE TREATY IN WASHINGTON ON OCTOBER 2. THE DISCUSSION, IN WHICH CANADA WAS NOT REPRESENTED BY A FULL NEGOTIATING TEAM, FOCUSED ON LEGAL AND CONSTITUTIONAL PROBLEMS RELATED TO A TRANSIT PIPELINE TREATY. KISSINGER

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